billion short. That means the troops will not get the supplies and armaments they need to prosecute the war on terrorism, and this, we all know, is not a short-term issue; this is something that is going to take months and years as we try to root out terrorism and make sure we can be safe around the world at our embassies and at home.

It means that operations and maintenance will suffer. Pilots will not be able to fly the missions they need for training, and upkeep on ships will slow down. It means Secretary Rumsfeld and the Joint Chiefs will have fewer resources in place to plan for the next step. It will mean we will not have the resources to take action against Saddam Hussein and the ''axis of evil.''

The President has established our priorities, and national defense is tops. The President has called on us to act on the defense bill first.

Why in the world would this decision be made not to fully fund the war? I think the response we are going to hear is: We do fully fund the President's request next year, but then we are going to create a reserve fund for defense spending for the future. Unfortunately, the reserve fund is nothing more than a gimmick.

If one looks elsewhere in the budget, specifically in the section titled ''Functional Totals,'' one will see that the defense money in the reserve fund is not there for defense. It would be used supposedly to reduce the debt. That certainly is a worthwhile objective, and we should continue to try to find ways to live within a budget and reduce the debt, as we had been doing for the previous 4 years.

We have to make some choices now. We should fund defense first, and we should not set up a mechanism that would short the Defense Department by $225 billion.

Our world changed on September 11. We know national security and homeland security is going to be important. We are going to have to act on it. We have to be prepared to defend ourselves against attacks internationally and at home. We have to provide support for our allies and friends, such as NATO and Israel. We must repel and deter and, in some instances, take preemptive action to prevent attacks on American citizens. No one in the Senate disagrees we are going to have to do more in national security and it is going to take more than 1 year. This is a long-term commitment.

I do want to particularly point out to my colleagues that there is a huge problem in the budget resolution reported by the committee in the defense area. We need to stand shoulder to shoulder with the President, and we have in the war on terrorism. We did it repeatedly and courageously after the events of September 11. But slowly we have slipped back into our normal sniping.

We will always have legitimate debate. It is about democracy. That is the great thing about America. We can disagree without undermining what needs to be done for our country. When it comes to defense, we cannot shortfund it, and we cannot allow it to slip off into partisan debate.

Here is what we need to do in the Senate, and we need to do it before the Memorial Day recess: Pass a budget resolution. What other form of discipline can we possibly have? What more important indicator is there about whether or not we are prepared to govern and make tough choices? Pass a budget resolution, fully fund the President's budget request in both the short and long term, add the $225 billion for defense back into the budget resolution, and eliminate the reserve fund. Pass the defense resolution first.

That, Mr. President, is how we stand shoulder to shoulder with the President in this war on terrorism.

I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCCONNELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order, there will now be a period of morning business not to extend beyond the hour of 12:30 with Senators permitted to speak therein for up to 10 minutes each, and with the time to be equally divided between the two leaders, or their designees.

The Senator from Kentucky.

Mr. MCCONNELL. Thank you, Mr. President.

VACANCY CRISIS IN THE SIXTH CIRCUIT

Mr. MCCONNELL. Mr. President, as the Senate is aware, we are facing a vacancy crisis in the Federal courts with over 11 of the Federal judgeships open.

This crisis is even worse at the appellate level where almost 19 percent of the appellate court judgeships are vacant. That means that one out of every five seats is empty.

Nowhere is the problem felt more acutely than in my home circuit, the Sixth Circuit Court of Appeals, which consists of Michigan, Ohio, Kentucky, and Tennessee. We have an astonishing 50-percent vacancy rate. Half of the seats of my home circuit are empty.

I would like to take a little time to discuss what that means to the people who live in Michigan, Ohio, Kentucky, and Tennessee—the people who make up the Sixth Circuit.

We have a chart of the Sixth Circuit—Michigan, Ohio, Kentucky, and Tennessee. There are 16 total seats on the Sixth Circuit. There are eight sitting judges representing, of course, a 50-percent vacancy. The President has sent up seven nominees for the eight vacancies. To date, there have been no hearings on any of those nominees.

The practical effect of that is each judge is having to dispose of many more cases. As the chart shows, according to the Administrative Office of the Courts, the average number of cases that active-status judges on the Sixth Circuit are having to dispose of has increased by 46 percent in the last 5 years.

As a result of this vacancy rate, the dispositions per active judge have gone up 46 percent since 1996—a 46-percent increase—to 535 matters per judge.

From just 1996 to 2001, the average number of cases each Sixth Circuit judge is deciding has increased by almost half—50 percent.

Let us take a look at this chart and the dramatic increase in decision time.

Why this matters is that with Sixth Circuit judges having to dispose of many more cases, this results in a dramatic increase in the length of time for an appellate decision to be rendered. In fact, according to the Administrative Office of the Courts, the Sixth Circuit is ranked next to last among all Federal circuits in median time for disposition of an appeal.

The national average is 10.9 percent. In Sixth Circuit, it is 15.3 percent, which is 40 percent as a result of the eight vacancies that we have.

It is not just the Sixth Circuit is next to last—someone has to be next to last—but that the deviation from the national average is so great.

Specifically, as my third chart shows, in 1994, when there were no vacancies, the Sixth Circuit was about 1 month slower in processing appeals than the national average, about 10 percent slower.

By the time of the first vacancy in the following year, 1995, the Sixth Circuit was a little over 2 months slower than the national average, or about 17 percent slower than the national average.

But by last year when there were eight vacancies, the Sixth Circuit was almost 4½ months slower than the national average, which translates into a full 40 percent below average.

There is no question that the significant number of vacancies has had an impact on litigants in the Sixth Circuit.

What that means is that in other circuits, if you file your appeal at the beginning of the New Year, you get your decision by about Halloween. But in the Sixth Circuit, if you file your appeal at the same time, you are forced to wait until Easter of the following year to get your case resolved.

These are alarming statistics. To put a human face on it, let me read some comments from judges and practitioners.

Ohio Attorney General Betty Montgomery has said that numerous death penalty appeals before the Sixth Circuit are experiencing prolonged delays. For example, the appeal of Michael Beuke has not been acted on in more than 2 years, and Clarence Carter has had a motion pending before the Sixth Circuit for 3 years.

These are death penalty appeals.

Federal district Judge Robert Holmes Bell described the Sixth Circuit as in a ''crisis'' because of the vacancies. He added, ''We're having to backfill with judges from other circuits who are basically substitutes. You don't get the same sense of purpose and continuity you get with full-fledged court of appeals judges.'' Even with ''backfilling,'' the Sixth Circuit still takes more than 40 percent longer than the national average to resolve cases.

Cincinnati Attorney Elizabeth McCord, as of the end of last year, had been waiting 15 months just to have oral argument scheduled for her client's appeal in a job discrimination suit. In the interim, her client died. According to the Cincinnati Post, delays like this have become ''commonplace'' because vacancies have left the court ''at half-strength and have created a serious backlog of cases.''

Mary Jane Trapp, president of the Ohio Bar Association, said ''Colleagues of mine who do a lot of Federal work are continuing to complain (about the delays). When you don't have judges appointed to hear cases, you really are back to the adage of 'justice delayed is justice denied.' ''

The purpose of my discussion is not to point fingers or to lay blame. My friend, the chairman—and he is my friend—knows how warmly I feel about the way he handled the district court vacancies in my State. I have repeatedly said how much I appreciate his actions in this regard, and I will continue to do so.

The point of my discussion is simply to underscore the problem facing my constituents in Kentucky and the citizens in the other States in the Sixth Circuit. I also feel compelled to discuss this problem because I don't see any indication of progress.

The President has nominated outstanding individuals to fill seven of the eight vacancies on the Sixth Circuit. And I am hopeful that he will soon fill that last vacancy. Yet, unfortunately, no hearings have been scheduled—not a single one—for any of these seven nominees, even though two of those nominees—Jeffrey Sutton and Deborah Cook, both from Ohio—have been before the Senate for almost a full year, and have not even had a hearing.

We are talking about a substantial amount of time:

John Rogers, from the Commonwealth of Kentucky, has been waiting for 119 days.

Henry Saad, Susan Neilson, and David McKeage from Michigan have now been waiting 160 days.

Julia Gibbons from Tennessee has been waiting for 190 days. And both Jeffrey Sutton and Deborah Cook from Ohio have now been waiting 343 days.

We are talking about well-qualified nominees. For example, Jeffrey Sutton graduated first in his law school class, has served as solicitor for the State of Ohio, and has argued over 20 cases before the U.S. and State Supreme Courts. Deborah Cook has been a well-respected justice on the Ohio Supreme Court for 8 years.

But the nominee, obviously, I know best—in fact, the only one I really know—is Professor John Rogers from my own State of Kentucky. He has taught law for almost a quarter of a century at the University of Kentucky College of Law. He has twice served in the Appellate Division of the Department of Justice, once as a visiting professor.

He has served his country as a lieutenant colonel in the U.S. Army Reserves. He was elected to Phi Beta Kappa at Stanford University during his junior year. He graduated magna cum laude from the law school at the University of Michigan, where he was elected to the Order of the Coif. He is clearly an outstanding selection by the President of the United States.

The Sixth Circuit is in dire need of the services of the fine lawyers such as Professor Rogers whom President Bush has nominated. I hope the Senate can make some reasonable progress on accommodating the court's urgent needs because it is important to remember when you have a circuit that is 50 percent vacant, this has a direct impact on litigants. Justice is being delayed and, therefore, denied in the Sixth Circuit. That has a direct bearing on the people who live in Michigan, in Ohio, in Kentucky, and in Tennessee.

It is still not too late for us to address this problem. I hope we will do it in the coming months because we genuinely have a crisis in the courts, and, particularly, we have a crisis in the Sixth Circuit.

I yield the floor.

The PRESIDING OFFICER (Mrs. CARNAHAN). The Senator from Wisconsin.

THE REPORT OF THE ILLINOIS GOVERNOR'S COMMISSION ON CAPITAL PUNISHMENT

Mr. FEINGOLD. Madam President, I rise today to talk about another significant milestone in our Nation's debate on the death penalty. Last week, our Nation witnessed the 100th innocent person to be freed from death row in the modern death penalty era—that is, since the Supreme Court found the death penalty unconstitutional in 1972. Number 100 is Ray Krone. Krone spent 10 years in the Arizona prisons for a murder he did not commit.

Yesterday, our Nation reached another milestone. The Illinois Governor's Commission on Capital Punishment released its report on the Illinois death penalty system. This report details problems with the administration of the death penalty in Illinois and makes dozens of recommendations for reform. This is actually the first comprehensive analysis of a death penalty system undertaken by a Federal or State government in the modern death penalty era.

Governor George Ryan of Illinois first made history 2 years ago when he was the first Governor in the Nation to step forward and place a moratorium on executions. He recognized that the death penalty system is plagued with errors and the risk of executing the innocent. Governor Ryan, who had supported the death penalty as a State legislator, realized that the death penalty system was so broken that justice could no longer be assured. Since reinstatement of capital punishment in Illinois in 1977, Illinois had put 12 people to death. But during this same period, 13 people were exonerated and removed from death row.

What led to this alarming ratio of 13 exonerations to 12 executions? It was a number of problems—from incompetent counsel, to convictions based on unreliable testimony of jailhouse informants, to mistaken eyewitness testimony, and, in some cases, police misconduct.

As Governor Ryan said when he suspended executions:

> I cannot support a system, which . . . has proven to be so fraught with error and has come so close to the ultimate nightmare, the State's taking of innocent life.

But we know that it is not just Illinois that has come so close to this ultimate nightmare. One hundred innocent people nationwide have been released from death row. Thirteen are in Illinois, but the remaining 87 innocent individuals were convicted and sent to death row by justice systems in States such as Arizona, California, Florida, Maryland, and Texas.

Governor Ryan did the right thing. Before signing off on another execution warrant, he wanted to be sure with moral certainty that no innocent man or women would face a lethal injection. But as he suspended executions, he also created an independent commission to review the death penalty in Illinois. This 14-member, blue ribbon commission includes our former colleague, and dear friend Senator Paul Simon; Judge Frank McGarr; Thomas Sullivan, a former U.S. Attorney; and Bill Martin, a former Cook County prosecutor. Judge William Webster, who has served our Nation with distinction as the former Director of the CIA and the FBI, was a special advisor to the commission.

Two years after its creation, I am pleased to report that the Governor's Commission on Capital Punishment has completed its work. Both death penalty supporters and opponents came together to review the problems in Illinois and have made numerous recommendations for reform. The people